

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jon Liroff	Team: Team # 4	CCRB Case #: 200615879	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 09/30/2006 12:30 AM	Location of Incident: § 87(2)(b)	Precinct: 71	18 Mo. SOL 3/30/2008	EO SOL 3/30/2008	
Date/Time CV Reported Mon, 11/27/2006 3:18 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Mon, 11/27/2006 3:18 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Christopher Kirch	00376	931764	071 PCT
3. POM Paul Insauto	14771	930399	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Gregory Abrahams	04441	907684	071 PCT
2. POM Herve Francois	06793	928315	071 PCT
3. POM Michael Scarcella	17894	895974	071 PCT
4. POM Gregory Bell	18081	927914	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Kirch	Abuse: PO Christopher Kirch stopped § 87(2)(b)	
B.POM Christopher Kirch	Abuse: PO Christopher Kirch searched § 87(2)(b)	
C.POM Paul Insauto	Abuse: PO Paul Insauto stopped § 87(2)(b)	
D.POM Paul Insauto	Abuse: PO Paul Insauto searched § 87(2)(b)	
E.POM Paul Insauto	Force: PO Paul Insauto used physical force against an individual.	
F. An officer	Abuse: An officer threatened § 87(2)(b) and § 87(2)(b) with the use of force.	
§ 87(4-b) § 87(2)(g)		

Synopsis

At approximately 12:30 AM on September 30, 2006, numerous officers from the 71st Precinct responded to a report of disorderly crowds moving through the Ebbets Field Houses in Brooklyn. At the same time, § 87(2)(b) and § 87(2)(b) entered § 87(2)(b) in the same housing complex, and proceeded to an apartment immediately adjacent to the side door of the building. As § 87(2)(b) and § 87(2)(b) waited for § 87(2)(b)'s brother to open the door, PO Christopher Kirch and PO Paul Insauto, entered via the side door and stopped, frisked and searched § 87(2)(b) and § 87(2)(b) (**Allegations A, B, C and D**) § 87(2)(g)

Both § 87(2)(b) and § 87(2)(b) attempted to stop the officers from reaching into their pockets. PO Insauto stopped searching § 87(2)(b) and frisked the area of his waistband. PO Kirch, on the other hand, placed § 87(2)(b) against the wall, continued searching his pockets and placed him under arrest. As PO Insauto and PO Kirch brought § 87(2)(b) out of the building, an unidentified individual approached and PO Insauto grabbed him by the shirt and pushed him up against a wall. (**Allegation E**) Outside the building, other officers were present as well and as § 87(2)(b) and § 87(2)(b)'s brother, § 87(2)(b) walked behind one of them, the officer turned around, raised his extended asp in the air and told them to step back (**Allegation F**). § 87(2)(b) was taken to the 71st Precinct and charged with § 87(2)(b).

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Summary of Complaint

§ 87(2)(b) – Complainant – Encl. 7-9

§ 87(2)(b) filed this complaint in an undated letter received at the CCRB on November 27, 2006. § 87(2)(b) did not witness the incident and was not formally interviewed, but in her letter she stated that at approximately 10:00 PM on September 29, 2006, her son, § 87(2)(b) was at the Empire Skating Rink on Empire Boulevard in Brooklyn. § 87(2)(b) called his brother, § 87(2)(b) and told him that a “problem” was about to happen and asked § 87(2)(b) to escort him and two friends home to § 87(2)(b), which is part of the Ebbets Field housing complex. § 87(2)(b) was at a friend’s house inside of § 87(2)(b) another building in the same complex. § 87(2)(b) and his unnamed friends proceeded to the apartment where § 87(2)(b) was and knocked on the door. However, at that moment officers from the 71st Precinct stopped and searched § 87(2)(b) who offered identification but was slammed against the wall. § 87(2)(b) opened the door to the apartment, questioned the officers and was told that he would be arrested as well. The officers found nothing on § 87(2)(b)'s person but arrested him anyway, at which point other officers approached and threatened to strike individuals with batons. In the car on the way to the precinct, officers told § 87(2)(b) “Hey you cupcake, we’re going to sex you in before we get to the precinct. We are going to eat your sweet ass before anyone at the bullpen get to you.” When § 87(2)(b) got to the precinct and spoke with the arresting officer, he asked if she was a corrections officer, as § 87(2)(b) had reported, and whether she told him not to let anyone search his pockets. § 87(2)(b) responded that this was in fact the case and that she had told § 87(2)(b) to say this if he was stopped. The officer then told her that that was why § 87(2)(b) was going to central booking. § 87(2)(b) was charged with § 87(2)(b), but § 87(2)(b) stated that he is asthmatic, does not smoke and that the officers planted the drugs on his person. § 87(2)(g)

§ 87(2)(b) – Victim – Encl. 10-11

At the time of this incident, § 87(2)(b) was a § 87(2)(b) old § 87(2)(b). He is a black male, 5'9" tall and 135 lbs.

§ 87(2)(b) was interviewed at the CCRB on December 8, 2006 and viewed a photo array of possible subject officers on January 29, 2007. He stated that at approximately 12:00 AM on September 30, 2006 he and his friend, § 87(2)(b) left the roller skating rink on Empire Boulevard between Bedford and Rogers Avenues. They exited onto Empire Boulevard and walked directly north on Bedford Avenue to the Ebbets Field Houses, located at § 87(2)(b). The complex is a high-rise in the form of an upper case letter I with central patios on the § 87(2)(b) sides. (see encl.) § 87(2)(b) stood on the § 87(2)(b) side patio with § 87(2)(b) for 2-3 minutes while he called his brother, § 87(2)(b) on his cellular phone. § 87(2)(b) was inside of § 87(2)(b) in his friend, § 87(2)(b)'s apartment on the first floor. § 87(2)(b) and § 87(2)(b) did not talk to or interact with anybody between the skating rink and § 87(2)(b) nor did they interact with anybody in front of that building.

§ 87(2)(b) told § 87(2)(b) to come inside the building and to call when he was in front of § 87(2)(b) door as they were playing music and would not hear him knocking. § 87(2)(b) and § 87(2)(b) entered the building through the lobby entrance and proceeded to § 87(2)(b) door, which is located on the first floor. As he was calling his brother, § 87(2)(b) looked out the window of the building's side door – next to the door to § 87(2)(b) apartment – and saw two white male plainclothes officers – identified from photographic arrays PO Christopher Kirch and PO Paul Insauto of the 71st Precinct SNEU team. PO Kirch and PO Insauto ran inside the building and asked § 87(2)(b) why he had run away. PO Kirch immediately turned § 87(2)(b) to face the wall and asked him if he had any weapons or contraband on him. PO Kirch frisked the front of § 87(2)(b)'s pants as he asked this, feeling around the pockets. PO Kirch did not indicate that he felt anything suspect in the pockets or ask § 87(2)(b) to identify any of the objects in his pockets.

PO Kirch then reached inside § 87(2)(b)'s two front and two back pants pockets, removing \$40 in cash, along with his keys, ID, watch and wallet. The keys, ID, money and watch were the only items in his front pockets. His wallet was in his back pocket. § 87(2)(b) still had his cellphone in his hand as he was searched and he repeatedly told PO Kirch that he would show him ID if that was what the officer wanted. PO Kirch repeatedly told § 87(2)(b) he wasn't cooperating, although he was. § 87(2)(b) had no contraband on his person and the officer did not remove any marijuana from his person on-scene.

While PO Kirch was searching § 87(2)(b) PO Insauto was patting down § 87(2)(b). § 87(2)(b) did not see PO Insauto go into § 87(2)(b)'s pockets, but assumed that he did.

During the incident, § 87(2)(b) opened the door and asked what was going on. The officers told him to go back inside and turn the music down, which he did, emerging soon after. § 87(2)(b) was then placed in handcuffs and escorted outside to a police car before being brought to the precinct. The officers at no point recovered any drugs from § 87(2)(b)'s person, but at the precinct he was charged with § 87(2)(b). At his arraignment, § 87(2)(b)'s charges were adjourned in contemplation of dismissal.

When interviewed on January 29, 2007, § 87(2)(b) viewed a photographic array containing all six members of the 71st Precinct SNEU team working at the time of the incident. § 87(2)(b) identified PO Kirch as the officer who searched him, PO Insauto as the officer who frisked § 87(2)(b) and PO Michael Houlihan as the officer who drove § 87(2)(b) to the precinct. PO Houlihan had no other role in the incident. § 87(2)(b) was asked if the officers told him anything en route to the stationhouse and he stated that PO Houlihan told him that because the officers could not catch § 87(2)(b)'s friends they arrested him. § 87(2)(b) stated that the officers did not say anything else to him on the way to the precinct.

§ 87(2)(b) – Victim – Encl. 12-14

At the time of this incident, § 87(2)(b) was a § 87(2)(b) old § 87(2)(b). He is a black male and is approximately 5'7" tall and 130 lbs.

§ 87(2)(b) was interviewed in-person at the CCRB on December 8, 2006 and stated that on September 30, 2006 he was in his friend, § 87(2)(b) apartment at § 87(2)(b) in Brooklyn. At approximately 12:15-12:20 AM he received a call from his brother, § 87(2)(b) stating that § 87(2)(b) was outside the roller skating rink on Empire Blvd between Bedford and Rogers Avenues. § 87(2)(b) told § 87(2)(b) that people had been fighting inside the skating rink and that there was now a large crowd of people in front of the rink and it appeared as though "something gonna happen" or something was about to "go down", such as a violent interaction or more fighting. § 87(2)(b) stated that things like this often happen at the skating rink on Friday nights but that § 87(2)(b) likes to go anyway and that § 87(2)(b) always tells him to make sure he knows how to get in contact with § 87(2)(b) should something happen. Over the phone, § 87(2)(b) told § 87(2)(b) that if something happened in front of the rink, he should run to § 87(2)(b) and § 87(2)(b) would let him into the apartment.

At approximately 12:20-12:25 AM, § 87(2)(b) called again and told § 87(2)(b) he was outside the apartment door. § 87(2)(b) opened the door and saw two officers – identified through investigation as PO Kirch and PO Insauto – run up the back stairs – across the hall – and enter the building. PO Kirch grabbed § 87(2)(b) placed him against the wall and frisked outside his pants pockets. § 87(2)(b) asked the officers why they were grabbing § 87(2)(b) and they told him to go inside and turn the music down. § 87(2)(b) offered to close the door so the music would not blare into the hallway and they could talk and the officers again told him to go inside and turn the music down, which he did, and then returned to the doorway. § 87(2)(b) was angry now as the officers were grabbing his brother in front of him and all they seemed to care about was him turning down the music. § 87(2)(b) tried to show the officers his ID but they did not pay any attention to him.

By the time § 87(2)(b) returned to the doorway the officers had § 87(2)(b) in handcuffs, standing against the wall, "Like they'd already found something." § 87(2)(b) indicated that he did not see any contraband at that point – § 87(2)(b) was later charged with § 87(2)(b) – but that the officers indicated to him that it was during the search that they recovered the marijuana. § 87(2)(b) stated definitively that as far as he could tell, the officers did not find any contraband on § 87(2)(b) at the building.

PO Kirch and PO Insauto escorted § 87(2)(b) down the stairs and outside to an unmarked car. § 87(2)(b) followed them outside, asking why the officers were taking § 87(2)(b) away and where they were taking him. § 87(2)(b) was asking, "What'd I do? What'd I do? Why are you taking me?" § 87(2)(b) tried to give his phone to § 87(2)(b) but the officers would not allow him to do so.

PO Insauto then told an individual, "Didn't I tell you to get back?" and pushed him against a wall. § 87(2)(b) stated that he did not know this individual's real name, but that he sees him around the building and had spoken with him about the complaint but the individual told § 87(2)(b) he did not want to be involved. § 87(2)(b) stated that he did not wish to complain about this portion of the incident and would not give any identifying information for this individual.

At this point a marked patrol car was outside as well. A tall, uniformed, dark-skinned black male ran toward § 87(2)(b) and the other individuals with his extendable baton out, waving it as though he was going to hit somebody with it. The officer then told them all to get back and they complied.

§ 87(2)(b) approached the unmarked vehicle and asked where they were taking § 87(2)(b) and the officers would only tell him that they were taking him to the 71st Precinct. § 87(2)(b) and his mother, § 87(2)(b) went to the 71st Precinct and § 87(2)(b) spoke with some officers there. The officers told her that § 87(2)(b) was with a crowd of people, one of whom allegedly had a gun, and that he ran from the location to § 87(2)(b). § 87(2)(b) stated that yes, his brother was with the crowd of people in front of the skating rink and that because § 87(2)(b) thought something was about to "go down", § 87(2)(b) told him to come to § 87(2)(b) and § 87(2)(b) would let him in.

§ 87(2) stated that § 87(2)(b) did not witness any of the incident because he remained inside the apartment the entire time and apart from the individual § 87(2) refused to identify, § 87(2) did not identify any other civilian witnesses.

§ 87(2) was interviewed again at § 87(2)(b) on June 20 and August 1, 2007. He was shown four separate arrays, containing every black male officer working in the 71st Precinct at the time of the incident. He did not identify any of the pictured officers.

§ 87(2)(b) – Victim – Encl. 15-17

At the time of this incident, § 87(2)(b) was an § 87(2)(b) old § 87(2)(b). He is a black male, 5'10" tall and 130lbs.

§ 87(2)(b) was interviewed in-person and viewed a photo array at the CCRB on January 29, 2007 and stated that on September 30, 2006 at approximately 12:30 AM he and § 87(2)(b) were on the patio in front of § 87(2)(b) in Brooklyn. The two had been near the roller skating rink on Empire Boulevard earlier that evening but § 87(2)(b) was evasive when asked about this and would only state definitively that he and § 87(2) were in front of § 87(2)(b) when the skating rink “let out” and numerous individuals were involved in some sort of dispute in that vicinity. Numerous police cars responded to the scene but § 87(2)(b) and § 87(2) entered § 87(2)(b) to meet up with § 87(2)(b)s brother, § 87(2)(b) at an apartment of a friend on the first floor of § 87(2)(b).

As § 87(2) and § 87(2)(b) stood in the hallway outside the apartment, two officers – identified from a photo array during the interview as PO Christopher Kirch and PO Paul Insauto – entered the building through a side door and immediately approached § 87(2)(b) and § 87(2)(b). PO Insauto told § 87(2)(b) to put his hands up in the air – he had them down in front of his body – and he complied. PO Insauto immediately reached his hands into § 87(2)(b)s front pockets and § 87(2)(b) put his hands down, protesting that PO Insauto did not have the right to search inside his pockets. PO Insauto removed his hands from § 87(2)(b)s pockets, patted down the outside of his pants and then turned his attention to § 87(2)(b) who stood with PO Kirch.

PO Kirch approached § 87(2) and reached for his front pockets, but § 87(2) – facing PO Kirch – put his hands down to block him from doing so, telling PO Kirch that § 87(2) knew his rights and the officer did not have the right to search inside his pockets. PO Kirch pushed § 87(2) backward against the wall, not very hard but with enough force to move him backward, and immediately reached inside § 87(2)(b)s front pockets. PO Kirch did not remove any contraband from § 87(2) or make any remarks indicating that he had found something. At this point § 87(2)(b)s cousin, whose name § 87(2)(b) could not recall, entered the building and approached the individuals. The cousin asked what was going on and § 87(2) told him, “Watch this guy (PO Kirch),” indicating that he thought PO Kirch was going to plant something in his pockets or do something untoward. PO Kirch immediately turned § 87(2) around and placed him in handcuffs.

Throughout this portion of the incident, § 87(2) stood at the open door to the apartment and was asking the officers what was going on and PO Insauto was yelling at him to get back. PO Kirch escorted § 87(2) out the front of the building with PO Insauto walking behind him. Outside, a uniformed black male officer, approximately 6'0" tall with dark skin also walked behind § 87(2) and the officers. § 87(2)(b) followed close behind and the black male officer turned around abruptly, extending an asp and ordering § 87(2)(b) to step back, stating that he did not like anybody to follow behind him. § 87(2)(b) complied.

§ 87(2) then asked his cousin to retrieve his cell phone from § 87(2)(b)s waistband. The cousin attempted to do so and PO Insauto grabbed him by the front of his sweatshirt, near the neck, with both hands and pushed him backwards. The cousin stumbled several feet and did not again attempt to retrieve the cell phone.

As the officers were placing § 87(2) into an unmarked car, a female arrived near the curb and interacted with the officers. Other than § 87(2)(b) and the cousin, no other civilians were present outside when PO Insauto grabbed the cousin and threw him backward.

Neither § 87(2)(b) nor § 87(2)(b) were in possession of any marijuana during the incident and neither individual was smoking marijuana or was in the proximity of anyone smoking marijuana during the incident.

§ 87(2)(b) was interviewed again at § 87(2)(b) on June 20 and August 1, 2007. § 87(2)(b) viewed four separate photo arrays containing every black male officer working at the time of the incident. § 87(2)(b) identified PO Herve Francois as the officer who threatened to strike him with an asp. The investigation later determined that this was a misidentification and PO Francois was not involved in this incident.

Results of Investigation

Civilian Witness

§ 87(2)(b) stated that there was a male present during the incident that PO Insauto allegedly shoved against a wall, but he would not identify this person, stating that he did not know his real name but had spoken to him about the complaint and this individual told him he did not want to participate in the investigation. § 87(2)(b) made no mention of this person in either of his statements to the CCRB. However, § 87(2)(b) identified this person as § 87(2)(b)'s cousin, but did not know his name. When asked directly about this, § 87(2)(b) stated that the individual's name was § 87(2)(b) – he was uncertain of the spelling – but refused to provide any contact information for him as the individual did not want to participate in the investigation. The investigator asked § 87(2)(b) to speak with this individual again and see if he would provide a statement and to then give the investigator contact information for him. § 87(2)(b) never provided this information but maintained that the individual did not want to participate. Furthermore, a search of the LexisNexis database revealed no record of any individual by this name. Apart from this individual, no other civilian witnesses were identified and none were interviewed.

Police Officer Statements

PO Christopher Kirch – Subject Officer – Encl. 18-21

In his arrest report for § 87(2)(b) prepared on September 30, 2006, PO Christopher Kirch stated that § 87(2)(a) 160.50.

PO Kirch also prepared property clerk's invoice number § 87(2)(b) for "1 zip lock bag of marijuana (FTP)".

PO Kirch had no entries in his memo book regarding this incident.

PO Christopher was interviewed at the CCRB on February 15, 2007. PO Kirch stated that on September 29-30, 2006 he worked 1700x0130 and was assigned to the 71st Precinct SNEU team, working directly with PO Paul Insauto. PO Kirch stated that the officers were not conducting a SNEU operation that night but were patrolling in uniform. At approximately 12:30 AM the officers responded to a gun run inside the Ebbets Field houses.

PO Kirch heard over the radio that crowds were running from the § 87(2)(b) side to the § 87(2)(b) side. He and PO Insauto therefore proceeded to the § 87(2)(b) side in the hopes that they would encounter whoever was running in that direction. PO Kirch and PO Insauto approached the closest door to § 87(2)(b), which faced the street.

The door opened into a wide interior hallway, off of which were numerous apartments. The door to one of the apartments was open and PO Kirch recalled that individuals were entering and exiting that doorway. He did not recall specifically how many people were in the hallway when he entered. PO Kirch immediately saw an individual to his left – identified from arrest records during interview as § 87(2)(b) – smoking marijuana. § 87(2)(b) looked at PO Kirch and put the marijuana in his jacket pocket. PO Kirch did not recall what else, if anything, § 87(2)(b) was doing when the officers entered or if § 87(2)(b) was interacting with

anyone in the hallway. He stated that he just recalled § 87(2) with marijuana in his hand and that § 87(2) made eye contact with PO Kirch and shoved the marijuana in his jacket pocket.

PO Kirch was later asked to describe in detail what it was that § 87(2) had in his hand when PO Kirch first observed him:

PO Kirch – Like I said, I'd have to look at the arrest paperwork but I remember he had marijuana in possession and he shoved it in his pocket.

Inv. Liroff – What do you remember seeing when you got there?

PO Kirch – I just remember as we walked in he was directly to my left and as soon as he saw me whatever he had, whatever it was that was in his hand, and he shoved it in his pocket.

Inv. Liroff – But you said he was smoking, did you see him smoking? Was it like a joint, or...?

PO Kirch – I'd have to refer to my paperwork; I don't have it with me.

Inv. Liroff – Your paperwork just says that he was seen with marijuana in plain view.

PO Kirch – I'd have to look at the voucher to see if it was a cigar wrapper or a cigarette wrapper, you know what I mean?

Inv. Liroff – But what do you remember?

PO Kirch – I don't remember.

Inv. Liroff – Okay. But initially you had said that you saw him –

PO Kirch – Oh yeah, he was smoking, but I don't remember. I can't describe it to you.

Inv. Liroff – But he had something lit that he was actually smoking?

PO Kirch – I believe so. Like I said I make a lot of arrests. I've arrested hundreds of people in the same situation.

Inv. Liroff – No, I understand, I'm just trying to get a sense of...so you see him with marijuana at that point.

PO Kirch – He definitely had marijuana.

Inv. Liroff – Do you remember if he was actually smoking or he just had a quantity of marijuana?

PO Kirch – I don't recall that.

PO Kirch approached and asked what § 87(2) had in his pocket and tried to reach inside. § 87(2) pushed PO Kirch's hand away and told him he could not touch him. PO Kirch turned § 87(2) around, placed him against the wall and rear-cuffed him. PO Kirch then reached inside § 87(2)(b)'s pocket and recovered the marijuana. PO Kirch also stated that he reached into the pocket and recovered the marijuana and then told § 87(2) to turn around. § 87(2) refused and PO Kirch forcibly turned him around, placed him against the wall and rear-cuffed him. PO Kirch stated that he did not frisk § 87(2) before reaching directly into his jacket pocket to retrieve the marijuana.

PO Kirch stated that PO Insauto was right behind him in the hallway but that PO Kirch was focused on § 87(2) so he could not see if PO Insauto interacted with anyone else. PO Kirch did not himself recall interacting with anybody in the open doorway but stated that at this point 15-20 people came out of the

apartment and into the hallway. These people “weren’t too happy” that PO Kirch was arresting someone so he escorted § 87(2)(b) out the door. PO Insauto exited the building behind PO Kirch and was trying to keep the other civilians away from PO Kirch and § 87(2)(b). The crowd followed PO Kirch and PO Insauto down the stairs in front of the building, shouting obscenities and telling them to let § 87(2)(b) go.

PO Kirch recalled that there were other uniformed officers on-scene but stated that they were just there in response to the gun run and did not take part in the incident with § 87(2)(b). PO Insauto was walking backwards, behind PO Kirch telling civilians to calm down and go back inside. PO Kirch stated that he was not aware of PO Insauto using any physical force against any civilians at this point.

Once PO Kirch and § 87(2)(b) were back at the precinct, PO Kirch asked § 87(2)(b) why he was “fighting” with the officers. PO Kirch stated that § 87(2)(b) responded, “You’re not allowed to touch me. You can’t touch me, you’re not allowed to put your hands on me. You can’t go in my pockets. The police aren’t allowed to do that.” PO Kirch responded, “Why do you think that? Who told you that?” § 87(2)(b) replied that his mother is a corrections officer and that she told him not to let the police go into his pockets and that if they try to do that he should fight and not let them do that to him. PO Kirch thought this was “a little odd.” § 87(2)(b)’s mother then came down to the precinct and PO Kirch pulled her aside and told her that her son said she had told him to fight with the police if they ever tried to touch him but that PO Kirch did not think she would have told him that. § 87(2)(b) replied that she had in fact told her son that and asked if PO Kirch was going to let him go. PO Kirch told her that § 87(2)(b) was under arrest and would not be let go.

PO Paul Insauto – Subject Officer – Encl. 22-23

PO Paul Insauto was interviewed at the CCRB on February 14, 2007 and stated that on September 29, 2006 he worked 1700x0135 and was assigned to the 71st Precinct SNEU team under Sgt. Gregory Abrahams. He had no entries in his memo book regarding this incident.

PO Insauto stated that on September 29, 2006 he worked 1700x0135 and was assigned to the 71st Precinct SNEU team. He did not immediately recall this incident but after viewing a photograph of § 87(2)(b) and hearing the investigator recount the basic details of the incident, PO Insauto stated he did recall an incident at § 87(2)(b) in late September 2006 – shortly before he went on vacation on October 9, 2006 – during which there was an incident or possibly shots fired at the Empire Skating Rink and he and PO Kirch were canvassing for a suspect with a gun.

PO Insauto and PO Kirch were walking on the patio of § 87(2)(b) and PO Kirch thought that there might be someone behind one of the doors to the building (the one at the top of the steps on the Bedford Avenue side which leads into the interior hallway). The officers approached the door and PO Kirch ran inside. PO Insauto stood in the doorway as someone approached them from outside. PO Kirch initially stated, “I was right by the door, just checking the person outside and Officer Kirch went in and he saw the defendant behind the door.” He later stated that the individual outside just walked away. PO Insauto then called out to PO Insauto that he had an individual under arrest and PO Insauto entered the building. There were two individuals in the hallway when PO Insauto entered. PO Kirch was arresting one of them – who PO Insauto identified as § 87(2)(b) from a photograph – and PO Insauto told the other individual to step away. PO Insauto stated that he neither frisked nor searched the second individual. PO Insauto recalled that there was loud music coming from one of the apartments on that hallway but stated that the door was closed and he did not know which apartment that was.

PO Kirch escorted § 87(2)(b) out and PO Insauto exited behind them as a crowd formed around § 87(2)(b) and the officers. PO Insauto told them to step back, motioning with his hands but not using any physical force against any of the members of the crowd. PO Insauto requested that other units respond to the location for crowd control and two or more marked RMPs arrived. Uniformed officers – PO Insauto could not identify or describe these officers – exited their vehicles and instructed the crowd to stand back. None of these officers had an asp, baton or flashlight out and none of the officers threatened to strike any members of the crowd with such an object.

PO Insauto did not use any physical force against any of the civilians present. PO Insauto did not see PO Kirch recover anything from the arrested individual and PO Kirch did not tell PO Insauto why the individual was under arrest until they got into their car and PO Kirch showed PO Insauto a quantity of marijuana. PO Insauto did not recall how much marijuana this was.

PO Insauto stated that his SNEU team often operates in the vicinity of § 87(2)(b) and makes numerous arrests there. Sgt. Abrahams usually worked in uniform during these operations and the two officers doing observations would be in plain clothes.

PO Insauto did not recall preparing a UF250 regarding this incident but stated that, had he frisked the second individual inside the building, he would have prepared a UF250.

PO Herve Francois – Witness Officer – Encl. 24-25

PO Herve Francois – identified from photo array by § 87(2)(b) – was interviewed at the CCRB on June 29, 2007 and stated that on September 29-30, 2006 he was scheduled to work 1500x2335 but had an arrest at 2311, returned to the stationhouse at 2335 and did not go end of tour until the morning of September 30, 2006. PO Francois did not have the correct memo book with him, but showed the investigator OLBS paperwork indicating that he arrested § 87(2)(b) at 2311 and referenced the command log showing that he appeared before the desk with a prisoner, § 87(2)(b), at 2335. PO Francois stated that he did not again leave the stationhouse until end of tour and he did not respond to a call for assistance in the vicinity of § 87(2)(b).

PO Michael Scarcella – Witness Officer – Encl. 26-27

PO Michael was interviewed at the CCRB on June 29, 2007 and stated that on September 29-30, 2006 he worked 1500x2335 with partner PO Herve Francois. Although his partner, PO Francois, worked several hours of overtime that night, PO Scarcella's memo book reflected that he went end of tour at 2335 and was not working at the time of this incident.

Sgt. Gregory Abrahams – Witness Officer – Encl. 28-29

Sgt. Gregory Abrahams was interviewed at CCRB on July 10, 2007 and stated that on September 29-30, 2006 he was assigned as SNEU Supervisor for the 71st Precinct and worked 1700x0157. Sgt. Abrahams stated that on the night of the incident he and his team had a foot pursuit through the Ebbets Field houses, but stated that this was such a common occurrence when he was SNEU supervisor – 3 times a week – that he did not recall the specifics of who they were chasing or the circumstances, but stated that it was probably an individual with a gun. Sgt. Abrahams did not recall the details of this incident or the circumstances of § 87(2)(b)'s arrest.

PO Gregory Bell – Witness Officer – Encl. 30-31

The radio communications CD regarding this incident has the following exchange between PO Gregory Bell and one or more unidentified officers.

0032 – PO Bell – “Let me have a couple units go to the § 87(2)(b) side of the patio.”
0032 – Unidentified Officer – “Greg, you out looking for someone?”
0032 – PO Bell – “10-5?”
0032 – Unidentified Officer – “You guys looking for someone?”
0032 – PO Bell – “Nah. Just a - there's a large crew. A large group of disorderlies. That uh - they're moving to the § 87(2)(b) side. You wanna just grab those guys and just give them a quick toss. Watch out for airmail.”
0033 – Unidentified Officer – “Greg, they're running your way Greg.”
0033 – Unidentified Officer – “Are they coming over the patio?”
0033 – Unidentified Officer – “They're going southbound”
0033 – Unidentified Officer – “Where?”

0034 – CENTRAL – “Southbound on what k?”

0034 – Unidentified Officer – “Disregard”

PO Gregory Bell was interviewed at the CCRB on September 17, 2007. He did not have his memo book with him and did not recall his exact tour on September 29 -30, 2006 but stated that he was assigned to the 71st Precinct Anti-Crime team at the time of the incident. PO Bell had no independent recollection of this incident but stated that he spoke with PO Kirch, who told him that SNEU had an arrest at § 87(2)(b) that night. PO Bell did not immediately recall this.

The investigator played the 71st Precinct communications CD from September 30, 2006, from 12:15 AM to 12:20 AM. PO Bell stated that that voice of the officer who states, “let me have a couple units go to the § 87(2)(b) side” as well as “You wanna just grab those guys and just give them a quick toss,” was his. PO Bell then stated that he recalled the incident somewhat, and remembered a group of individuals throwing up gang signs in the vicinity of the incident location. PO Bell stated, “I said, ‘Give them a quick toss,’ it’s like slang terminology to just stop them and question them. They were gang members that always hang out in the patio and when they were walking through the patio they ah, they were just throwing up a lot of different gang signs, yelling out different things. Just more or less a stop question, that was all. Nothing crazy happened.”

PO Bell did not recall on which side of the complex he was located, but stated that if he asked for a unit to go to the § 87(2)(b) side, then he was probably on the § 87(2)(b) side, looking over to the § 87(2)(b) side. He did not recall seeing any individuals running into the § 87(2)(b) side of the location. He did not independently recall SNEU being on-scene, stated that he did not take part in the SNEU arrest and did not recall seeing the SNEU team bring a defendant out of the building.

PO Bell did not recall seeing any officers with their asp out or threatening individuals. PO Bell did not recall seeing PO Kirch or PO Insauto using physical force against any individuals.

Officers Not Interviewed

In addition to the SNEU and Anti-Crime Teams operating in the vicinity of the incident location, communications records reflected at least 6 uniformed units, at least twelve officers, responding to the XO’s call for assistance on the § 87(2)(b) side of the Ebbets Field Houses. However, by all civilian accounts, as well as those of PO Kirch and PO Insauto, these two officers were ones directly involved in § 87(2)(b)’s arrest. While § 87(2)(b) and § 87(2)(b) described a uniformed black male officer threatening them with an asp outside the building, this was the only other officer present and he could not be definitively identified. § 87(2)(g)

Police Department Documents – Encl. 32-35

Communications Records

The radio communications CD from the 71st Precinct on the night of the incident reflected that at 12:14 AM, the SNEU team reported a large fight in the vicinity of the Empire Skating Rink. However, one minute later they went back over the air and reported that the situation was under control. At approximately 12:29 AM, the 71st Precinct Executive Officer (not identified on the roll call but would have to be a captain or above) reports a “disorderly group” at § 87(2)(b), states that he has a “couple of footmen” with him but that he needs two units with turret lights for crowd control. 71A and 71B go over the air as responding to the location. Later, 71D, 71Anti-Crime, 71 Patrol Supervisor and a conditions vehicle all go over the air in relation to the job but do not report times of arrival. At 12:32 AM an officer, identified during his interview as PO Gregory Bell, requests two units to the § 87(2)(b) side in response to “a large group of disorderlies” and suggests, “You wanna just grab those guys and just give them a quick toss.” At 12:35 AM an open radio transmission is heard and central asks, “Is there a unit with an emergency transmission? 71XOk?” The 71 XO responds, sounding as though he is running, “Central I’m alright. I’m just trying to figure out what’s going on.” Other units ask if the XO is alright and he responds that he is. At 12:38 AM the Patrol Sergeant requests that all midnight units meet him at that corner of Montgomery

Street and Bedford Avenue. At 12:44 AM the Patrol Supervisor asks central to thank all his units and advises that the SNEU team has one individual under arrest at § 87(2)(b) and will be transporting him back to the stationhouse. Central asks whether the SNEU arrest is in regards to the call for assistance at § 87(2)(b) and the patrol supervisor replies that the jobs are one and the same.

It should be noted, however, that no members of the SNEU team went over the air in response to the job at § 87(2)(b) and their only transmissions were regarding the initial fight.

Roll Call

Roll call indicated that PO Kirch was assigned to the 71st Precinct SNEU team with PO Insauto, PO Noel Jugraj, PO Mark Zajac, PO Michael Houlihan and Sgt. Gregory Abrahams at the time of the incident.

Roll call also identified the following uniformed black male officers as working Tour 3 on September 29, 2006 and Tour 1 on September 30, 2006: PO Herve Francois, PO Paul Parkinson, PO Christopher Dixon, PO Ali Sheppherd, PO Maxiimus Payne, PO Joel Cummings, PO Kenneth Shaw, PO Donald Jeanfelix, PO Barthold Alexandre, PO Jeffrey Peterkin, Sgt. (now Lt.) Ronald J. Anderson. Photographs were ordered of each of these officers.

Command Log

The 71st Precinct Command log reflects that PO Herve Francois appeared before the desk with a new arrest at 11:35 PM. And that he, accompanied by PO Luis Vega and PO Hector Barias (Tour 1 Sector IJ), escorted the defendant to § 87(2)(b).

The command log also reflects that PO Ron Sawers and PO Jeanfelix left in RMP 1383 to drop off narcotics at the Field Intelligence Division at 12:30 AM. As they would therefore have been out in an RMP at the time of the incident, and are both black males, their photographs were requested as well.

The command log also reflects that PO Kirch appeared before the desk with § 87(2)(b) at 12:50 AM, that he was charged with § 87(2)(b) and that § 87(2)(b)'s mother came to the precinct at 1:00 AM and was notified of the arrest.

UF 250 – Stop and Frisk Log/Reports

No stop and frisk reports were not completed on September 29-30, 2006 regarding § 87(2)(b) nor were any reports filed for any individual stopped at § 87(2)(b) or any individual stopped by PO Insauto or PO Kirch.

Notice of Claim

To date, no notice of claim has been filed involving § 87(2)(b) or § 87(2)(b) in connection with this incident.

Resolution of Criminal Case

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian Conviction History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB Histories – Encl. 1-5

This is the first CCRB case on file involving § 87(2)(b) or § 87(2)(b). Neither PO Kirch nor PO Insauto has any prior substantiations in his CCRB history.

Conclusions and Recommendations

Officer Identification

PO Kirch was identified from arrest records as § 87(2)(b)'s arresting officer. From a photo array of SNEU officers working on the night of the incident, § 87(2)(b) and § 87(2)(b) both identified PO Kirch as the officer who searched § 87(2)(b) and PO Paul Insauto as the officer who searched § 87(2)(b). PO Kirch's testimony confirmed his role in the incident and PO Insauto confirmed that he was present at the time of the incident.

Although § 87(2)(b) and § 87(2)(b) viewed photographs of every black male officer working at the time of the incident, § 87(2)(b) could not identify any of them as the officer who allegedly drew his asp and § 87(2)(b) identified only PO Francois as a possible subject officer. However, PO Francois's testimony, arrest report and command log entry reflect that he had an arrest and appeared at the desk immediately prior to the incident and was transporting a prisoner to § 87(2)(b) at the time of the incident. Similarly, no communications or other documentation places him at the scene of the incident. § 87(2)(g)

Undisputed Facts

Undisputed in this case is that as § 87(2)(b) and § 87(2)(b) stood in front of an apartment adjacent to the side door of § 87(2)(b), PO Kirch and PO Insauto entered through that door. PO Kirch proceeded directly to § 87(2)(b) and attempted to search his pockets. § 87(2)(b) tried to prevent him from doing so and PO Kirch placed him up against the wall, searched him and arrested him.

Disputed Facts

§ 87(2)(g)

§ 87(2)(g)

Assessment of Evidence

Regarding events which immediately preceded this encounter, communications records reflect that the SNEU team went over the air at 12:15 AM stating that there was a large fight at the Empire Skating Rink. § 87(2)(b) stated that § 87(2)(b) called him from that location at approximately the same time, reporting that people had been fighting inside the rink and that there was now a large crowd out front. § 87(2)(b) stated that there are often fights at the skating rink so he told his brother that if anything were to happen, he should run to the Ebbets Field Houses – one block away – on the § 87(2)(b) side and § 87(2)(b) would let him into the apartment. Approximately fifteen minutes later, the 71st Precinct XO went over the air to report a disorderly group on the § 87(2)(b) side of the Ebbets Field houses. Per § 87(2)(b) and § 87(2)(b)'s account, at approximately this same time, they entered § 87(2)(b) through the front door on the § 87(2)(b) side and called § 87(2)(b) from in front of the apartment door, immediately adjacent to the side door of the building. § 87(2)(b) confirmed that he received this call at approximately 12:25-12:30 AM.

At 12:32 AM, PO Greg Bell went over the air and reported that “two crews, two groups of disorderlies” were moving from the § 87(2)(b) side to the § 87(2)(b) side and he suggested that officers respond to that location and “just grab those guys and just give them a quick toss.” PO Kirch stated that he

heard over the radio that the crowds were moving to the § 87(2)(b) side and for that reason he and PO Insauto entered § 87(2)(b) through the side door in the hopes of running into to them inside the building. While PO Insauto did not recall these radio communications, he stated that he and PO Kirch were canvassing the location and that PO Kirch thought he saw someone standing inside the side door and for that reason PO Kirch ran inside. It was at this point that the officers encountered § 87(2)(b) and § 87(2)(b) immediately inside the door. While both officers stated that they were at the Ebbets Field houses in response to a gun-run, this was not corroborated by radio records, which reflected only the report of disorderly crowds. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegations Not Pleaded

Although § 87(2)(b) alleged that officers used force against § 87(2) and spoke discourteously to him in the car on the way to the stationhouse, calling him a “cupcake” and telling him they were going to “sex him in”, § 87(2)(b) reiterated none of this § 87(2)(g)

§ 87(2)(g)

Allegation A – PO Christopher Kirch stopped § 87(2)(b)

Allegation B – PO Christopher Kirch searched § 87(2)(b)

In *People v. DeBour* (encl. i), the New York State Court of Appeals established a 4-tiered system of police encounters, the legal implications of which are summarized in PD 344-153 Street Encounters – Legal Issues (encl. ii), which is also available as a memo book insert. The Court of Appeals, Department protocol and Administrative case law have consistently held that in order to effect a Level-III stop – in which an

officer may forcibly stop an individual and, if the officer suspects that the individual has a weapon, frisk that individual – the officer must have reasonable suspicion that the individual is committing, has committed or is about to commit a felony or penal law misdemeanor. Even with this level of suspicion, the officer may only search the individual’s person if the frisk reveals what the officer reasonably believes to be a weapon concealed on the individual’s person. The only other circumstance under which an officer can search an individual, without a warrant, is if the officer has probable cause to arrest that person.

§ 87(2)(g)

§ 87(2)(g)

Allegation C – PO Paul Insauto stopped § 87(2)(b)
Allegation D – PO Paul Insauto searched § 87(2)(b)

§ 87(2)(g)

Allegation E – PO Paul Insauto used physical force against an individual.

§ 87(2)(b) and § 87(2)(b) consistently described PO Insauto grabbing an individual and shoving him against a wall during the incident. However, both refused to provide any contact information for this individual as they stated that he did not want to be involved in the complaint. § 87(2)(b) identified this individual as § 87(2)(b), but also refused to provide any contact information for him as he stated that § 87(2)(b) did not want to take part in the complaint. A Lexis Nexis search for this individual returned negative result. § 87(2)(g)

Allegation F – An officer threatened § 87(2)(b) **and** § 87(2)(b) **with the use of force.**

Although § 87(2)(b) and § 87(2)(b) viewed photographs of every black male officer working in the 71st Precinct at the time of the incident, § 87(2)(b) did not identify any of the pictured officers. § 87(2)(b) identified PO Herve Francois as being this officer. However, when interviewed, PO Francois stated that he was at the stationhouse processing an arrest at the time of the incident and both the command log and his memo book corroborated this. Similarly, PO Francois’s partner, PO Michael Scarcella, stated that

PO Scarcella had gone end of tour before the time of the incident, leaving PO Francois at the stationhouse to process his arrest. § 87(2)(g)

[REDACTED]

§ 87(4-b) § 87(2)(g)

[REDACTED]

[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: